

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 56

Case No. 56

STATEMENT OF CLAIM

In violation of the Agreement, M. V. Baca was terminated for alleged failure to return to service following a leave of absence. Claimant should now be returned to service with all seniority and other rights unimpaired and that he be compensated all wage loss suffered as a result of the carrier's dismissal commencing August 20, 1993 and continuing until violation ceases.

FINDINGS

On August 20, 1993, the Claimant was notified by letter as follows:

Reference M. A. Kotter's letter to you dated June 30, 1993 granting your request for a thirty (30) day extension of your leave of absence, effective July 1, 1993 through July 30, 1993.

Due to your failure to return to work on August 2, 1993, following your leave of absence that ended on July 30, 1993, you must forfeit all seniority rights as per Rule 15, Paragraph E . . . which reads in part: "An employee failing to report for duty on or before the expiration of their leave of absence will forfeit all seniority rights, unless an extension is granted."

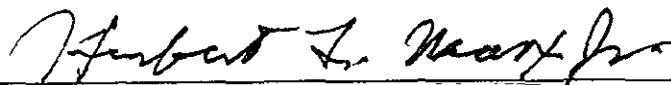
The Claimant was granted a leave of absence commencing April 5, 1993 and then was given three extensions of the leave, ending July 30, 1993. The Claimant contended that he had been in touch with the Manager, Gangs by telephone both before and after July 30 and, according to the Claimant, was advised the matter of a leave extension was under consideration. The Manager, Gangs agreed that he did have telephone conversations with the Claimant, but each time he advised the Claimant that there would be no leave extension and that he must report for work.

Despite these conflicting interpretations of the conversations between the Claimant and the Manager, Gangs, two things are certain. First, the Claimant does not assert that he had actually received a leave extension prior to August 2. Second, the Claimant failed to report for work on August 2 or thereafter.

Rule 15 is clear and unambiguous. Having not received a leave extension beyond July 30 and having failed to report for work thereafter, the Rule is self-executing. The Board has no basis to find that the Carrier improperly placed the Rule in effect in relation to the Claimant.

A W A R D

Claim denied.



HERBERT L. MARX, Jr., Neutral Referee

NEW YORK, NY

DATED: October 18, 1995